

May 23, 2005

Sent Via Facsimile

Mr. Ralph E. Thompson
9098 Mount Tabor Road
Aurora, IN 47001

Re: Formal Complaint 05-FC-71; Alleged Violation of the Access to Public Records Act by the Dearborn County Regional Sewer District

Dear Mr. Thompson:

This is in response to your formal complaint alleging that the Dearborn County Regional Sewer District ("District") violated the Access to Public Records Act ("APRA") by failing to give you copies of meeting minutes. I find that the District did not violate the Access to Public Records Act because you did not request records from the District, the agency against which your complaint is filed.

BACKGROUND

As recently as April 5, 2005, but since mid-2004, you have requested meeting minutes of the District from the administrators and auditor of Dearborn County. On the occasion of April 5, 2005, you sent electronic mail requests for minutes of the "sewer district board" to Bryan Messmore, administrator of Dearborn County, and Stephanie Disbro, who is a secretary for the Dearborn County Commissioners. You filed your formal complaint on April 21, 2005, citing the failure of the Dearborn County Sewer District to give you the minutes from District board meetings.

I sent a copy of your complaint to the District. I received a written response from the attorney for the District, Lisa deHart Lehner. Ms. Lehner stated that neither the Board of the District nor its Executive Director, Doug Baer, had received any request for records from you. She pointed out that from the copies of the e-mails messages to Mr. Messmore and Ms. Disbro, you requested records of the District from a different agency, the Dearborn County Commissioners. She also stated that because you have failed to accept delivery of documents that the District has sent to you via certified mail, she doubts whether you would have accepted any records from the District even if you had properly requested them. Because the District has now become aware of your request, via your complaint, the District enclosed a compact disc

containing the minutes of the District meetings. I enclose the District's responsive letter and the compact disc with this advisory opinion.

ANALYSIS

Any person may inspect and copy the public records of any public agency during the regular business hours of the public agency, except as provided in section 4 of the APRA. Ind. Code 5-14-3-3(a). A denial of disclosure by a public agency occurs when the person making the request is physically present in the office of the agency, makes the request by telephone, or requests enhanced access to a document, and twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made. IC 5-14-3-9(a)(2). If a person requests by mail or by facsimile a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the public agency receives the request. IC 5-14-3-9(b). This office has said that requests received by a public agency by e-mail are similar in kind to mailed requests or requests received by facsimile, and the public agency has seven days in which to respond.

You have complained that a public agency, the Dearborn County Regional Sewer District, has failed to respond to your requests for records and failed to give you the records. However, you sent your request to the secretary for the county commissioners and to the county administrator. From the response of the District, and from my own investigation, it appears that the District is a discrete public agency. I am puzzled that you provided the name of the District's executive director and the District's contact information in your complaint, but did not make your request for records to that agency. In any case, it was not a violation of the APRA for the District to not respond to a request for its records that you made to a different public agency, the county commissioners.

Had the county commissioners maintained a copy of the District's meeting minutes, those minutes would have been disclosable public records of the commissioners. However, your complaint is limited to the District, so I offer no opinion with respect to whether the Dearborn County Commissioners conformed to the APRA when they received your request.

CONCLUSION

I find that the Dearborn County Regional Sewer District did not violate the APRA when it failed to respond or give you records, because you did not send your requests to the Dearborn County Regional Sewer District.

Sincerely,

Karen Davis
Public Access Counselor

cc: Lisa deHart Lehner